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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C., 20554

OCT 16 1995

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
Policies and Rules Concerning )  
Children's Television Programming )  
Revision of Programming Policies )  
for Television Broadcast Stations )

MM Docket No. 93-48

DOCKET FILE COPY ORIGINAL

COMMENTS OF

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## SUMMARY

These Comments are filed on behalf of more than twenty organizations representing constituents whose sole purpose is to promote the education, health and welfare of children. Commenters urge the Federal Communications Commission to adopt a programming standard of one hour of educational programming per day, aired after 7 a.m.

In the Notice, the Commission has found that since the passage of the Children's Television Act ("CTA"), there has been only a modest increase in educational programming for children. These Comments demonstrate that reliance on the voluntary efforts of broadcasters to provide educational programming for children is doomed to fail. While broadcasters have responded to pressure from Presidents, the Congress and the FCC by temporarily increasing their educational fare, these responses have been short-lived and have withered as soon as the government pressure ceased to exist. Clearly, until the FCC adopts specific requirements, marketplace forces will continue to work against the production, provision and commercial success of educational children's programming. Therefore, Commenters support the adoption of a standard of one hour of "core programming" per day to give broadcasters objective notice of what is expected of them at license renewal.

Educational programming is significant to this nation's children as it provides them with important learning opportunities. In a world where television is increasingly

filled with sexually explicit and violent programming, enlarging educational fare offers children an important age appropriate alternative. Educational programming is especially important to lower income and minority children who watch as many as fifty six hours of programming per week, and do not have access to alternative sources of educational programming.

Because children watch an average of twenty-eight (28) hours of television per week, the standard should be set at an hour per day of qualifying "core programs." This will ensure a diversity of programming choices for children of all ages. Commenters believe "core programs" should include only those programs that are specifically designed to educate children, with education as a significant purpose. Programs with pro-social messages, or programs that merely lack violence, do not fulfill this goal unless they are produced with the intent to teach a child a skill or an objective. Moreover, credit should not be given for programming aired before seven a.m., because few children watch television at that time. Finally, core programming should be regularly scheduled and publicized in advance so that parents and children can find and watch these educational shows.

Requiring stations to air an hour of core programming a day is constitutional and consistent with the CTA. It is constitutional because a programming standard balances the First Amendment interests of children with those of the broadcasters. It is consistent with the CTA because the FCC has ample authority to interpret the CTA in this way.

While Commenters strongly urge the FCC to adopt a programming standard, no matter what action the FCC decides to take in this proceeding, it should improve its monitoring and enforcement of the CTA. The FCC should begin by adopting a standard children's programming report which collects the same information from all licensees. This will facilitate effective monitoring of station compliance with the CTA. The FCC should also penalize licensees who fail to comply with its reporting requirements. Such disregard for the Commission's rules make it impossible to ascertain the efficacy of the CTA.

In addition, the FCC should educate the public about what the CTA and its rules require and what action they can take to enforce it. But the FCC cannot abdicate its own responsibility to ensure that stations comply with the CTA at renewal, as well as, during the license term. Currently, broadcasters are requesting and in many instances receiving financially lucrative advantages, e.g., spectrum flexibility and must carry preferences, because of their status as "broadcasters" who provide programs to serve the public interest. The FCC must ensure that broadcasters do not hold themselves out as broadcasters only when it conveniently suits their financial interests, but otherwise shirk their responsibilities as public trustees. The CTA requires that broadcasters provide public service to children, and the FCC must ensure that they do.

Finally, commenters oppose the adoption of program sponsorship because it would reduce the availability of

educational programming. It would also significantly increase the administrative costs of complying with the CTA.

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COMMENTS OF

CENTER FOR MEDIA EDUCATION, ET AL.

INTRODUCTION

We beseech the FCC to read all of the comments submitted in this proceeding with an eye toward who the Commenters are and where their interests lie. Those filing this Comment are a coalition of over twenty organizations whose collective mission is to protect and nurture children - their health, development, and well-being.<sup>1</sup> None of these commenters have a financial interest in the outcome of this proceeding. Commenters believe that when it comes to children "to aim only at the bottom line is to aim too low."<sup>2</sup>

**I. ADOPTION OF A PROGRAMMING STANDARD AND INCREASED MONITORING WILL INCREASE EDUCATIONAL AND INFORMATIONAL PROGRAMMING FOR CHILDREN**

The Children's Television Act ("CTA") was passed in 1990 to increase the amount of educational and informational programming

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<sup>1</sup> Description of Commenters is located at Appendix C.

<sup>2</sup> Bill Baker, President of Thirteen/WNET New York (quoted by Newton Minow, Remarks on the Thirtieth Anniversary of the "Vast Wasteland", May 9, 1991).



available to children on commercial broadcast stations. After reviewing the record to date, the Notice has found that "the degree of increase in specifically designed educational programming for children appears to be quite modest at best."<sup>3</sup>

The reason for this is simple. After relying on the voluntary efforts of broadcasters to increase educational programming for children for thirty years, Congress determined that approach had failed and passed the CTA. While the CTA required each station to air some programming specifically designed to serve the educational and informational needs of children, it directed the Federal Communications Commission ("FCC" or "Commission") to implement this requirement. However, the FCC's rules turned out to be merely a reiteration of the CTA,<sup>4</sup> and as Commissioner Chong describes, the definition of "educational programming" was so filled with loopholes, you could drive a truck through it.<sup>5</sup> Thus, both the CTA and FCC rules left broadcasters in the dark about what was expected of them at license renewal. Add to this, a marketplace that works against the production, provision, and commercial success of educational programming, and it is no wonder that despite over thirty years

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<sup>3</sup> Policies and Rules Concerning Children's Television Programming, Notice of Proposed Rule Making, MM Docket No. 93-48, 10 FCC Rcd. 6308 at ¶ 19 (Apr. 5, 1995) ["Notice"].

<sup>4</sup> 47 C.F.R. § 73.671.

<sup>5</sup> Commissioner Chong's remarks at the FCC's Open Meeting on MM Dkt. No. 93-48 (Apr. 5, 1995); See also Mile Mills, FCC to Consider Rules for Educational TV, Wash. Post, Apr. 6, 1995, at B-8.

of efforts, educational programming for children has not significantly increased. Any increases in programming that may have been realized, are predominantly at times when children are not in the viewing audience or in programming that is merely "pro-social," not truly educational.

Unless broadcasters are given explicit direction from the Commission on what the CTA requires, broadcasters will undoubtedly continue to fail to provide a meaningful amount of educational programming for children aired when children are watching. Closing only one or two of the loopholes raised by the rules will not effectively fulfill the purpose of the CTA. For example, if only the definition of educational programming is tightened, real educational programming will continue to be aired during the early morning hours, if at all, when children are not in the viewing audience. Similarly, if a quantitative standard is adopted, without strengthening the definition of educational programming, stations will again claim shows such as the "Jetsons" and "Flinstones" as educational fare. Stations will also air all of their educational programming before dawn. Finally, defining core programming only as that aired after seven a.m., without specifying how much and what kind, will undercut any chance of increasing the amount of educational programs for children. This demonstrates that all of the issues raised in the Notice are interdependent and that educational programming will only be increased by addressing each part of the problem.

Thus, the solution is for the FCC to adopt a programming

standard that will quantify the amount of educational programming each broadcaster must air. Commenters strongly support the adoption of a programming standard of one hour per day.

Commenters also support the adoption of a definition of "core programming" that ensures that only programming specifically designed to educate and inform children is counted toward compliance with the CTA. Moreover, Commenters believe only programming aired after 7 a.m. should be counted.

Furthermore, Commenters agree with the Notice that more stringent monitoring of station compliance with the CTA should be undertaken.<sup>6</sup> This will enable the FCC to determine the efficacy of the rules adopted in this proceeding. Adopting these measures is a simple, fair and effective means to encourage broadcasters to increase the broadcast of educational programming for children, which, in turn, would have demonstrable benefits for both children and society at large.

**A. Marketplace Forces Work Against the Provision of Educational Children's Programming**

In every decade since 1960, the Commission has trumpeted the requirement of television broadcasters, as public trustees, to render public service to children.<sup>7</sup> As the Commission well knows, the agency has held hearings, issued notices, and released reports stressing educational programming inadequacies and the need to serve this unique child audience, so important to the

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<sup>6</sup> Notice at ¶ 7.

<sup>7</sup> See Report and Statement of Policy Re: Programming Statement, 20 RR 1901 (1960).

nation's future, and hence, the public interest.<sup>8</sup> When government officials, like the President, Congress or FCC, have shown an interest in promoting public service to children, the broadcast industry has responded to these campaigns with improved service for brief periods.<sup>9</sup>

But these periods of response to what has been aptly termed "lifted eyebrow" -- never last.<sup>10</sup> The reason why is well known to the Commission: In a fiercely competitive environment, the commercial broadcaster is highly profit motivated. The drive for profit causes broadcasters to schedule programming that maximizes "eye balls" and thus advertising revenues.<sup>11</sup> In this environment, children's educational programming is doubly

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<sup>8</sup> See, e.g., Children's Television Report and Policy Statement, 50 FCC 2d 1 (1974); TV Programming for Children, Report and Order, 96 FCC 2d 634 (1984), aff'd sub nom. Action for Children's Television v. FCC, 756 F.2d 899 (D.C. 1985).

<sup>9</sup> See Remarks of Squire D. Rushnell, FCC En Banc Hearing on Children's Television, MM Docket No. 93-48 (June 1994) ["Rushnell Remarks"].

<sup>10</sup> Thus, Commenters tend to disagree with the thrust of the Notice that it is essential to determine accurately the amount of specifically designed programming being aired. While such information would be useful (and we agree that there are serious limitations with the NAB's existing study), any increase in the amount of programming currently available would be due to current increased attention by the FCC and, as history shows, will last only as long as the pressure ensues.

<sup>11</sup> At the en banc hearing, Jonathan Rogers, president of CBS Television Stations Division, testified that "the FCC's regulatory scheme [must be] implemented in a way that takes into account the economic realities of the broadcast business, [namely,] reaching as large a number of people with our programming as possible...[otherwise we] will wither and die." Statement by Jonathan Rogers, President of CBS Television Stations Division, FCC En Banc Hearing in Children's Television, Docket MM 93-48, June 15, 1994, at 5.

disadvantaged.

First, advertisers are generally more interested in reaching adults than children. Adults represent a larger number of "eyeballs" than children. Moreover, adult "eyeballs" are more valuable to advertisers than children's "eyeballs" because adults have more money to spend and are interested in more products. Thus, market forces tend to limit the amount of children's programming broadcasters are generally willing to put on in the first instance.<sup>12</sup>

Second, the children's programming that broadcasters currently air tends to be driven by the interests of the advertisers who want to reach children, primarily toy marketers.<sup>13</sup> Toy marketing has become an enormous business in recent years<sup>14</sup> and is expected to increase by 15%-20% annually

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<sup>12</sup> These economic factors militating against children's TV are well-known to the Commission from its own Task Force's research. Television Programming for Children: A Report of the Children's Television Task Force, FCC, Vol. IV, at 29-35, 41-44, 76 (Oct. 1979) ["Task Force"]. See also Bruce Watkins, Improving Educational and Informational Television for Children: When the Marketplace Fails, 5 Yale L. & Pol'y Rev. 345, 356 (1987) ["Watkins"].

<sup>13</sup> Patricia Aufderheide, Ph.D. & Kathryn Montgomery, Ph.D. The Impact of the Children's Television Act on the Broadcast Market (June 1994) ["Aufderheide & Montgomery"]. This Report was filed as testimony in the Commission's 1994 en banc hearing in this docket.

<sup>14</sup> Id. Children, up to age 12, have discretionary spending power of about \$8.6 billion of their own money per year, teenagers spend \$57 billion. Id. at 6. These age groups, combined, influence approximately \$132 billion spent annually by their parents. Id. This represents a total of almost \$200 billion that the advertisers are vying for. Id. Product-related television shows account for 90% of new toy production. Id. at 5. See also Stephen Kline, Out of the Garden, 146-147

as competition for young viewers grows.<sup>15</sup> This multi-billion dollar market has made children's television a competitive, high-stakes game.<sup>16</sup> To succeed in this environment, children's shows must be introduced with a pre-sold merchandising deal.<sup>17</sup> The proliferation of programming designed to market toys, has squeezed out other types of children's programming including educational programming.<sup>18</sup>

Most educational children's programs are not driven by marketing, and find it nearly impossible to compete.<sup>19</sup> Toy

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(1993) ["Kline"].

<sup>15</sup> Big Business in Little Viewers, Broadcasting & Cable, July 24, 1995, at 37.

<sup>16</sup> Product-related programs are typically offered to stations on a "barter" basis. Aufderheide & Montgomery at 18-19. The stations pay nothing for the program, they merely split the advertising time with the program distributor. Id. To get stations to carry their programs, or to ensure a desirable time slot, toy manufacturers often agree to buy advertising time on other programs or provide up-front cash payments. Id.

<sup>17</sup> Children's television is driven by deals rather than by programs. Aufderheide & Montgomery at 7. As explained by Squire Rushnell, former Vice-President of children's programming at ABC and current President of his own distribution company, "You need a program that's paid for, first, but then you also need further support, to get stations to clear [or carry] it. *Sonic the Hedgehog* doesn't make it because it's a good program. It makes it because Sega is willing to put in extra dollars for advertising and promotion. So if you're going, say, to a station in Chicago, the company has to be ready to put more advertising dollars into that market because otherwise, the station might go with a Hasbro-related program." Id. at 18-19.

<sup>18</sup> Aufderheide & Montgomery at 18-22.

<sup>19</sup> Some children's educational formats simply do not lend themselves to marketing, e.g. Beakman's World, children's news. While some educational programs on non-commercial television, have had very successful licensing, e.g., Barney, Sesame Street, Thomas the Tank Engine, however, the content of these shows has

companies make million dollar deals to get their children's shows on the air and in the desirable time slots,<sup>20</sup> relegating educational programming to the pre-dawn "FCC friendly" ghetto.<sup>21</sup> Appearing in these marginal time slots guarantees that these shows will never develop a sizable audience, thus making commercial failure for educational programming a self-fulfilling prophesy. Further, the lack of product licensing works against the success of educational programs because of the lack of cross-promotion.<sup>22</sup> Educational programs are additionally disadvantaged in the marketplace because the effectiveness of educational programming often entails targeting to a narrow age

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not been driven by marketing. By contrast, the content of entertainment programs on commercial television is illustrated by the description of a new program in Broadcasting & Cable. One show "Magic Knight Rayearth", featuring a female superhero, exists because "the toy industry believes that it's time to create products for girls that are not just fashion and hairplay but driven by showing girls as heroes . . . . They use as an example Kimberly, the pink Power Ranger. They think if they'd exploited female characters more, girls would be more interested in participating in shows and buying the products". David Tobenkin, Competition is Fierce for Small-fry, Broadcasting & Cable, Jan. 23, 1995, at 64. See also Watkins at 363.

<sup>20</sup> Stations receive cash payments from distributors to put programs in an advantageous time spots. Aufderheide & Montgomery at 18-20. Additionally, some stations who carry these shows are given a percentage of the merchandising revenues produced in their geographical area. Id. For the station, no cash outlay is required to air the product driven show. For example, in over 85% of the country, "Bananas in Pajamas" and "Blinkey Bill" promised stations a 10% share of merchandise royalties in money and a barter split. David Tobenkin, New Blocks Put Squeeze on Kids Syndication, Broadcasting & Cable, July 24, 1995, at 46.

<sup>21</sup> Aufderheide & Montgomery at 21; See also Watkins at 362.

<sup>22</sup> In other words, not only do the programs promote toys and other licensed products, but the products promote the programs. Kline at 196-200.

range, thus further limiting a show's potential audience.<sup>23</sup>

Educational programs also tend to be relatively expensive to produce since they are generally based on research and testing. Despite the greater expense, they tend to be less profitable as they are less likely to generate revenue from licensing.

Predictably, stations prefer to air entertainment fare that are tied in with children's merchandise. While stations may make token efforts to air children's educational programming when the spotlight of government is focussed on this area, when the spotlight is gone, they return to their prior practices.<sup>24</sup> There is no incentive for one station or one network to provide more educational programming, since no competitor wants to be at a disadvantage. Voluntary measures are untenable as there is no incentive to resist the competitive pressure to fill each time slot with the show with the greatest commercial value.<sup>25</sup>

**B. History Demonstrates That Reliance on the Voluntary Efforts of Broadcasters and an Absence of Governmental Pressure Will Not Lead to Sustained Increases of Children's Educational Programming**

Any question as to whether the marketplace incentives undermine efforts toward voluntary provision of children's educational programming can be dispelled by reviewing the history of efforts to get broadcasters to air more educational

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<sup>23</sup> For example, teenagers are unlikely to be interested in Sesame Street. Likewise, programs that require reading, such as Ghost Writers, are of little interest to pre-schoolers.

<sup>24</sup> Rushnell Remarks at 2.

<sup>25</sup> Max Frankel, 'Alas for Hamelin!', N.Y. Times, Oct. 8, 1995, at 44. See also Watkins at 368.



programming for children.

The FCC first recognized a commitment to children's television as constituting an essential element of a broadcaster's duty to serve the public interest in 1960.<sup>26</sup> In 1961, then FCC Chairman Newton Minow made his famous "Vast Wasteland" speech to the National Association of Broadcasters, emphasizing the role of television in teaching and informing children and called upon broadcasters to voluntarily fulfill their obligation to air quality children's programming.<sup>27</sup> While broadcasters initially responded to the Chairman's call with increased programming, their efforts dropped off once the pressure was gone.<sup>28</sup>

As a result, Action for Children's Television petitioned the FCC in 1970 to require broadcasters to air 14 hours per week of children's programming.<sup>29</sup> In response to CTA's petition and the

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<sup>26</sup> Report and Statement of Policy Re: Programming, 20 RR 1901 (1960).

<sup>27</sup> Newton N. Minow, Speech to the National Association of Broadcasters (May 9, 1961).

<sup>28</sup> Newton N. Minow and Craig L. Lamay, Abandoned in the Wasteland at 50-51 (1995) ["Minow & Lamay"]; See also Cole & Oettinger, Reluctant Regulations: The FCC and the Broadcast Audience (1978), at 264 (citing a Roberts-Hartenberger study which revealed a definite correlation between outside pressure for change and broadcasters upgrading of children's programming reflected in more instructional and educational programming instead of just entertainment)..

<sup>29</sup> Petition of Act for Rulemaking Looking Toward the Elimination of Sponsorship and Commercial Content in Children's Programming and the Establishment of a Weekly 14 Hour Quota of Children's Television Programs, NOI and NPRM, Docket No. 19142, Jan. 20, 1971, at ¶ 2c.

overwhelming number of comments received, the Commission reminded broadcasters of their obligation to air educational programming for preschool and school-aged children in its 1974 Policy Statement.<sup>30</sup> The Commission, however, rejected a mandatory minimum amount of programming and instead decided to rely on self regulation by broadcasters.<sup>31</sup> Again, broadcasters temporarily responded by increasing the amount of children's educational programming.<sup>32</sup>

That increase, however, was not sustained. In 1979, the FCC's Children's Television Task Force compared programming aired in 1973-74 with 1977-78 and concluded that educational and informational programming had not significantly increased since the 1974 Policy Statement.<sup>33</sup> The Task Force recommended that the FCC impose a requirement that each broadcaster air seven and one-half hours per week of children's educational programming.<sup>34</sup>

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<sup>30</sup> Children's television report and Policy Statement, 50 FCC 2d 1, at 5, aff'd sub nom., Action for Children's Television v. FCC, 564 F.2d 458 (D.C. Cir. 1977).

<sup>31</sup> Id. at 6.

<sup>32</sup> Former ABC children's television chief Squire Rushnell charted the relationship between threats by presidents to regulate television and the broadcaster response. Both Richard Nixon and Gerald Ford said if there was not more children's educational television, the government would insist on it. As a result, the networks were airing an average of 10 hours per week by 1975. Rushnell Remarks at 2.

<sup>33</sup> Task Force, Vol. IV at 41.

<sup>34</sup> This included 5 hours per week of educational or instructional programming for preschoolers and 2 1/2 hours per week of educational or instructional programming for school age children. Task Force, Vol. I at 76.

It further recommended that this programming be scheduled between 8 a.m. and 8 p.m.<sup>35</sup>

Before they could act on the Task Force's recommendation, a new FCC Chairman, Mark Fowler, took office and sent the signal to broadcasters that they no longer needed to serve children. In a 1983 speech, Chairman Fowler deplored the "lifted eyebrow" approach and asserted that at renewal, the broadcaster had no obligation to children to which the FCC would hold the licensee responsible.<sup>36</sup> Fowler believed that the marketplace was king<sup>37</sup>, and overruled prior precedent proscribing program-length commercials in children's TV programming.<sup>38</sup> With that, the floodgate of cartoon programs really directed to selling toys opened, with consequences still felt greatly today.<sup>39</sup> Despite the Task Force's recommendation to adopt quantitative minima, the FCC under Chairman Fowler significantly diluted the already weak

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<sup>35</sup> Id.

<sup>36</sup> Address by Mark Fowler, Chairman FCC, Children and the FCC, Arizona State Univ. (Feb. 11, 1983) cited in Washington Ass'n for Television & Children v. FCC, 712 F.2d 677, 683, n.12 (D.C. Cir. 1983).

<sup>37</sup> In his words, "television is just a toaster with pictures." Television Digest, October 19, 1987, at 4.

<sup>38</sup> See Letter to American Broadcasting Cos., 23 FCC 2d 132 (1970); Topper Corp., 21 FCC 2d 148 (1969).

<sup>39</sup> By the end of Ronald Reagan's presidency in 1990, the amount of children's educational television being aired had dropped to 1 3/4 hours per week. Rushnell Remarks at 4.

policies relating to children.<sup>40</sup>

It was against this background and to end this pattern that Congress unanimously adopted the Children's Television Act in 1990.<sup>41</sup> For the first time, Congress imposed a specific programming requirement: that as part of their obligation to serve the public interest, television station operators and licensees should "serve the educational and informational needs of children through the licensee's overall programming, including programming specifically designed to serve such needs."<sup>42</sup> There was to be no postcard renewal in this one area. On the contrary, the broadcaster must demonstrate to the Commission, at renewal, that it has served the educational needs of children in its programming, and the FCC must examine that showing to determine

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<sup>40</sup> Children's Television Programming and Advertising Practices, 95 FCC 2d 634 (1984), aff'd sub nom. Action for Children's Television v. FCC, 756 F.2d 899 (D.C. Cir. 1985).

<sup>41</sup> Recognizing consistent market failure, Congress rejected the Commission's reliance on market forces finding the dearth of programming cited in earlier studies still existed. S. Rep. No. 227, 101st Cong., 1st Sess. 8, 9 (1989); H. Rep. No. 675, 100th Cong., 2nd Sess. 9, 12 (1988) (Commercial broadcasters have little reason to broadcast children's educational programs "because such programs are designed for a narrow audience and the revenue tends to be far less than pure entertainment").

See also Education, Competitiveness and Children's Television: Hearing before the Subcomm. on Communications of the S. Comm. on Commerce, Science & Transp., 101st Cong., 1st Sess. 40 (1989) (testimony of Althea Huston) (noting cost constraints on commercial production of children's educational television); Id. at 55 (statement of David Britt) ("the competitive realities of commercial television cannot and will not bring more educational television to children").

<sup>42</sup> 47 U.S.C. 303b(a)(2).

whether the broadcaster had met this obligation.<sup>43</sup>

Despite this legislative mandate, the Commission, in adopting rules to implement the CTA in 1991, declined to specify any minimum quantitative standard for analyzing the children's programming specifically designed to educate and inform children at license renewal time.<sup>44</sup> Experience under these rules demonstrates that reliance on broadcasters' voluntary efforts does not and cannot work.<sup>45</sup>

In a 1994 study, CME demonstrated that after the passage of the CTA, broadcasters' programming increased, but only after citizen activism sparked media coverage and official expressions of concern.<sup>46</sup> The study further showed that while regulatory commitment does affect the market, the effect of such pressure appears to be short-lived.<sup>47</sup>

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<sup>43</sup> 47 U.S.C. 303b(a).

<sup>44</sup> Matter of Policies and Rules Concerning Children's Television Programming, Report and Order, 6 FCC Rcd 2111, at ¶¶ 22-24 (Apr. 9, 1991). The FCC believed industry promises that it would take the proper self-regulatory steps.

<sup>45</sup> Notice at ¶ 12. See also Watkins at 375 (noting that any willingness among broadcasters to begin discussions on the provision of educational children's programming only emerges when they are faced with something like 'unfriendly' legislation).

<sup>46</sup> Aufderheide & Montgomery at 7-8. After very little reaction from broadcasters during the first two years of the Act, pressure from the FCC resulted in children's educational shows suddenly appearing in response to renewed government attention to the Act. Id. In 1993, in the midst of both a national debate and threats of government action, the broadcasting industry responded to the CTA by airing shows such as Beakman's World, Citykids, and Cro. Id.

<sup>47</sup> Id. at 22-24.

Information obtained since that study confirms this trend. Take, for example, the record of VHF Station KCAL-TV, Los Angeles, licensed to the Walt Disney Company.<sup>48</sup> Disney's record as to children's educational programming was dismal for the first two years after the CTA took effect. Indeed, for the first 12 months (Oct. 1991-Sept. 1992), Disney aired a single half-hour program, "Smoggies," from 5:30 a.m. to 6 a.m.<sup>49</sup>

During the next year, KCAL's core programming showing consisted of nine months of one half-hour program ("Captain Planet") per week aired on Saturday morning from 6 a.m. to 6:30 a.m., three months of "Smoggies", again from 5:30 to 6 a.m., and three one half-hours showings of "Bill Nye." Thus, the amount of core programming was both quite small and presented at an early hour when few children are in the viewing audience. Disney followed this pattern so as to not undermine its profit-seeking. At that time, there was no FCC pressure.

That pressure came in March 1993 when the Commission issued

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<sup>48</sup> CME obtained and reviewed the children's program reports on public file in preparing the petition to deny the transfer of ABC to Disney. Application for Consent to Transfer Control of Broadcast License Held by Capital Cities/ABC, Inc. to the Walt Disney Company, Petition to Deny, or in the Alternative, to Obtain a Social Contract, File No. BTC, BTCH, or BTCCT 950823KA-LI, Sept. 28, 1995.

<sup>49</sup> At that hour, the number of children in the viewing audience is about 2.5%. Nielsen Media Research (Aug. 1995). Indeed, this program would be excluded from being counted as core programming (programming specifically designed to serve educational/informational needs) under the Commission's proposed definition because it aired prior to 6 a.m. See Notice at ¶ 36. As discussed infra, Commenters believe that core programming should be limited to programming aired at or after 7 a.m., rather than 6 a.m.

its Notice of Inquiry, followed by en banc hearings in June 1994 to assess industry compliance with the CTA. Disney, like many in the broadcast history, responded to this heightened regulatory interest by increasing the quantity of its core educational programming. As shown by the attached chart, Appendix A, Disney increased the amount of core programming from about one-half hour per week in 1993 to over three hours per week in 1994 and 1995. However, the majority of its core programming -- three hours -- was presented in very early morning times (before 7 a.m.).

Disney of course does not stand alone.<sup>50</sup> Commenters have

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<sup>50</sup> CME et al. also reviewed the record of Westinghouse's five television stations and found similar deficiencies. See Petition of Office of Communication of the United Church of Christ, et al., to deny, or alternatively, to negotiate a social contract, filed in reference to Application of Westinghouse Electric Corporation for consent to transfer control of CBS, Inc., File Nos. BTC, BTCH or BTCCT 950803 KQ - 950803 LI (1995). In only six of the 55 quarters analyzed did any Westinghouse station exceed three hours per week. WBZ-TV, Boston, for example, ranged from a low of .19 hours in the fourth quarter of 1992 to a high of only 1.78 hours in the second quarter of 1995. These averages reflect the fact that several Westinghouse stations had many weeks in which they aired no children's core programming. Several of the Westinghouse stations, notably WJZ Baltimore and WBZ Boston, increased the amount of children's educational programming over time, presumably in response to governmental interest.

Other filings in this docket amply demonstrate the poor response of broadcasters. A new study by Dr. Dale Kunkel based on broadcasters' own estimates of their compliance as reported in their license renewal applications found that the quantity of children's programming has remained unchanged since 1992. Dale Kunkel, Ph.D. and Ursula Goette, Broadcasters' Response to the Children's Television Act, at 4 (Oct. 12, 1994) ["Kunkel & Goette"]. The study revealed that broadcasters in the largest media markets admitted to showing an average of only 2.1 hours per week of educational programming and 17% reported showing none at all. Id. at Table 1 & 5.

See also South Florida Preschool PTA, A report on Miami Television Stations' Compliance with the Children's Television Act of 1990 (May 25, 1995) ["SFPPTA"] (finding Miami-area

focussed on Disney because it is the premier producer of children's entertainment programming with deep financial resources. Despite these resource, Disney sloughed its CTA responsibility until it felt pressure from the FCC;<sup>51</sup> and even then, it sought to fulfill its responsibility with as little damage as possible to its bottom line by scheduling children's educational programming predominantly in pre-dawn hours when the child audience is small. The Commission should ponder that record. It shows beyond any doubt that only regulatory action can suffice to induce broadcaster compliance with the spirit of the CTA. Moreover, this regulatory scheme must not be limited to special notices or hearings; to be effective, it must continue indefinitely.

## **II. COMMENTERS SUPPORT THE ADOPTION OF ONE HOUR OF CORE PROGRAMMING PER DAY**

The Commission cannot now decide to continue to rely on the voluntary actions of the industry and to simply monitor the industry's efforts, without undermining the entire thrust of the CTA and perpetuating the same pattern that has failed children. Television stations continue to be driven by the need to earn profits. Indeed, the industry is becoming even more fiercely competitive. It is folly for the Commission to embrace once more

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commercial television stations were not making a serious effort to adequately serve the educational needs of children with only 1% of their total programming being educational programming).

<sup>51</sup> When the FCC gets tough, the broadcasters all begin looking for 'qualifiers' to fulfill their legal obligations. Aufderheide & Montgomery at 10.



this failed pattern.

In contrast, adopting a programming standard of one hour per day is a fair and effective means of tempering the drive for maximizing profits with ensuring adequate public service to children. With a standard, no station is put at a competitive disadvantage by acting against its economic self interest.<sup>52</sup> At the same time, adopting a standard, particularly of one hour a day of core programming as we advocate, would provide an incentive to substantially increase the amount and diversity of educational programming available to children.

A recent poll shows that the American people want the FCC to take action to assure that more educational programming will be available for children on broadcast stations. 82% of respondents said there is not enough educational programming available for children on commercial broadcast television.<sup>53</sup> Three in five adults surveyed (60%) support specific requirements that

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<sup>52</sup> Commenters do not believe that broadcasters will necessarily lose money showing quality children's educational programming, only that they can make more money with adult programming or children's entertainment programming that is tied to products. Indeed there are several examples of popular children's educational programming, such as Cro, Beakman's World, Bill Nye. Prior to being pulled, Cro pulled the largest audience in its time slot. Max Frankel, 'Alas for Hamelin!', N.Y. Times Mag. (Oct. 8. 1995).

<sup>53</sup> Public Attitudes About Children's Television, CME Survey (Oct. 5, 1995) [See Appendix B]. Moreover, 52% of persons polled overwhelmingly reject the notion that there should be no requirement for educational programming. Id. 28% of persons surveyed said the quality of programming was poor or very poor; while thirty-five percent thought it was just fair. Id. And more than three in eight (38%) respondents felt it was getting worse, while only one in eight (12%) thought it was getting better. Id.